

**Tawil v Edelstein**

2008 NY Slip Op 31550(U)

June 6, 2008

Supreme Court, Kings County

Docket Number: 0006827/2008

Judge: Jack M. Battaglia

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS: PART 72

-----X  
RONALD TAWIL and ROCHELLE TAWIL,

Index No. 6827/08

Plaintiffs,

-against-

**DECISION AND ORDER**

Jack M. Battaglia  
Justice, Supreme Court

I. SCOTT EDELSTEIN and  
OLETA ASSOCIATES,

Defendants.

-----X  
Recitation in accordance with CPLR 2219 (a) of the papers considered on Plaintiffs' application for an order, pursuant to RPL 329, canceling a recorded deed:

- Judgment/Order (Proposed)
- Affidavit
- Affidavit
- Affirmation
- Exhibits A-E

With this application, plaintiffs Ronald Tawil and Rochelle Tawil seek an order "pursuant to Real Property Law § 329 canceling and declaring null and void *ad initio* a certain fraudulent deed dated August 7, 2007 and recorded in the office of The City Register of the County of Kings . . . purported to have been made and executed by them in favor of one I. Scott Edelstein, thereby transferring the premises 420 Avenue T, Brooklyn, New York."

Plaintiff commenced this action on March 4, 2008 against defendants I. Scott Edelstein and Oleta Associates. In a single cause of action, Plaintiffs allege that their signatures as grantors on the recorded deed were forged, and the document signed and filed without their knowledge or consent. Although the Verified Complaint does not so specify, the action is essentially one to set aside a recorded instrument relating to real property, recognized in equity at common law, and codified at Real Property Law § 329. (*See Esther M. Mertz Trust v Fox Meadow Partners, LTD.*, 288 AD2d 338, 340 [2d Dept 2001]; *Piedra v Vanover*, 174 AD2d 191, 195 [2d Dept 1992].) A money judgment and punitive damages are also sought.

Defendant Edelstein has joined with Plaintiffs in requesting that the deed be removed from the record, and declared null and void *ab initio*. He asserts in an Affidavit that he is the "alleged transferee" under the deed, but that the "transfer was without [his] knowledge or consent." (Affidavit of I. Scott Edelstein, ¶¶ 2,3.) He asserts further that his "name was forged

to various documents in order to accomplish that transfer.” Copies of those documents are not provided, nor are they otherwise identified or described. (*Id.*, ¶ 3.)

Neither Defendant has been served. Plaintiffs’ counsel explains that defendant Edelstein was not served because counsel “believe[d] that the transferee would have been reluctant to execute such an affidavit if he were served.” (Affirmation, ¶ 2.) No explanation is offered for not serving defendant Oleta Associates, designated in the deed at a specified address for “return by mail.” Plaintiff Ronald Tawil asserts in his Affidavit that Oleta Associates “appears to be a fictitious entity with a mail drop” at the address specified in the deed. (Affidavit, ¶ 4.)

Ronald Tawil also asserts that “[s]ometime in early March of this year, [he] discovered that the . . . premises had been fraudulently deeded to one I. SCOOT [*sic*] EDELSTEIN and [his] signature and that of [his] wife ROCHELLE had been forged on the fraudulent deed.” (*Id.*, ¶ 3.) He does not explain how he learned of the deed, which was not recorded until February 12, 2008. Neither Ronald Tawil nor his counsel explain the absence of an affidavit from plaintiff Rochelle Tawil.

The deed contains an acknowledgment in accordance with Real Property Law § 309-a, stating:

“On the 7<sup>th</sup> of August 07 before me, the undersigned, personally appeared Ronald Tawil and Rochelle Tawil personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person on behalf of which the individual(s) acted, executed the instrument.”

The acknowledgment is signed by Linda Prasad, a Notary Public, State of New York, Qualified in Queens County. Ms. Prasad has not submitted an affidavit on this application; no reference at all is made to *her* in any of the *papers*.

On March 13, 2008, the Office of The City Register recorded an Affidavit of Dara Jaffee, Assistant Commissioner, New York City Department of Finance, in which she states that “we have been advised that the owners of the property, Ronald & Rochelle Tawil, did not sign the deed” dated August 7, 2007, and that “[u]ntil such time as the purported fraudulent conveyance is nullified, this affidavit shall serve as notice to the public of the possible defect in the chain of title.”

The Court notes in the first instance that Plaintiffs cite no authority for the issuance of a judgment, granting them relief prayed for in their Verified Complaint, in the absence of an answer or appearance in the action. There is no basis for a confession of judgment (*see* CPLR

3218), even if Mr. Edelstein's Affidavit authorized the entry of judgment, which it does not.

Substantively, the application raises many questions. "A certificate of acknowledgment attached to an instrument such as a deed raises a presumption of due execution, which presumption, in a case such as this, can be rebutted only after being weighed against any evidence adduced to show that the subject instrument was not duly executed." (*Paciello v Graffeo*, 32 AD3d 461, 462 [2d Dept 2006] [quoting *Lum v Antonelli*, 102 AD2d 258, 260-61 (2d Dept 1984), *aff'd* 64 NY2d 1158 (1985)].) "[A] certificate of acknowledgment should not be overthrown upon evidence of a doubtful character, such as the unsupported testimony of interested witnesses, nor upon a bare preponderance of evidence, but only on proof so clear and convincing as to amount to a moral certainty." (*Id.* [quoting *Albany County Sav. Bank v McCarty*, 149 NY 71 (1896)].)

Here, we do not even have the "unsupported testimony" of one of the grantors, Rochelle Tawil, that the signature on the deed purporting to be hers was forged. On the other hand, we do have the unusual circumstance of a disclaimer of all interest by the putative grantee, Mr. Edelstein. But Mr. Edelstein professes no personal knowledge about the execution of the deed generally, or the authenticity of either grantor's signature specifically, nor does Mr. Edelstein offer even speculation on how it is that his name, the name of a real estate attorney, appears on the deed. Mr. Edelstein does not disclaim any relationship with Oleta Associates, nor any knowledge about its principals or business.

These are among the extraordinary coincidences and gaps in information that appear from the papers submitted. There is no information about Oleta Associates, nor any indication that any investigation of it was done, even the simple expedient of a visit to the address specified on the deed. Mr. Tawil does not tell us how he learned about the deed, which might explain the coincidence of his knowledge within a few weeks of the deed's recordation. We have no explanation for the absence of an affidavit from Mrs. Tawil or Linda Prasad, the notary, or any information as to Ms. Prasad's employment. Although Mr. Edelstein refers to documents on which his signature was forged "in order to accomplish [the] transfer" (Affidavit of I. Scott Edelstein, ¶ 3), they are neither provided nor identified or described. And, again, he does not explain the coincidence of his profession, nor disclaim any relationship with, or knowledge about, Oleta Associates.

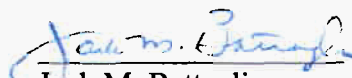
If, indeed, the grantors' respective signatures on the deed were forged, and the purported transfer fraudulent, the purpose must have been to benefit someone, with the necessary consequence that someone else, in addition to the grantors and grantee, might be harmed. There is nothing in the papers submitted on this application that allows the Court to make any assessment of any possible consequence to a third party, or that would warrant judicial action adverse to their interests without notice and an opportunity to be heard.

For the present (*see* CPLR 6512, 6514), Plaintiffs have the protection of their notice of pendency and the recorded "notice to the public of the possible defect in the chain of title"

(Affidavit of Dara Jaffee.) Plaintiffs do not assert that the recordation of the allegedly fraudulent deed has caused them any actual damage to date, or that any is imminent.

The application is denied, with leave to renew with showings addressed to the questions and issues raised in this decision and order - - in the first instance, a showing that, procedurally, the court may entertain it.

June 6, 2008

  
Jack M. Battaglia  
Justice, Supreme Court